

ARTICLE XV

QUALITY STANDARDS

A. City Review of System Performance

1. When there have been similar complaints made or where there exists other evidence which, in the judgment of the City Manager, casts reasonable doubt on the reliability or quality of cable service, the City Manager shall have the right to compel the Grantee to test, analyze and report on the performance of the system in order to protect the public against substandard cable service. Such test or tests shall be made and the report thereof shall be delivered to the City Manager no later than fourteen (14) days after the City Manager notifies the Grantee that he is exercising such right. Such report shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested; the equipment used and procedures employed in said testing; the results of such tests; and the method in which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

2. Said tests and analyses shall be supervised at the expense of the Grantee, if so requested by the City Manager, by a professional engineer who is not on the permanent staff of the Grantee. The engineer shall sign all records of such special tests and forward such records to the City Manager with a report interpreting the result of the tests and recommending actions to be taken.

3. In the event that the Grantee shall fail to make the improvements, repairs or adjustments to the system necessary to restore the reliability or quality of cable service within sixty (60) days after the City Manager has given notice to the Grantee that he is exercising his right to compel the Grantee to test, analyze and report on the performance of the system as set forth in paragraph 1 of this Section B, the Grantee shall pay to the City the sum of Five Hundred Dollars (\$500.00) per day for each day that the Grantee has failed to remedy such deficiency, unless the Grantee proves to the reasonable satisfaction of the City Manager that the delay was caused by factors beyond the control of the Grantee, or is otherwise waived by the City Council for good cause shown.

ARTICLE XVI  
INSPECTION AND REPORTS

A. Inspection of Property and Records.

At all reasonable times, the Grantee shall permit any duly authorized representative of the City to examine all property of the Grantee, together with any appurtenant property of the Grantee situated within or without the City, and to examine and transcribe any and all maps and other records kept or maintained by the Grantee or under its control which deals with the operations, affairs, transactions or property of the Grantee with respect to its franchise. If any such maps or records are not kept in the City, or upon reasonable request made available in the City, and if the City Council shall determine that an examination thereof is necessary or appropriate, then all travel and maintenance expenses necessarily incurred in making such examination shall be paid by the Grantee.

B. Annual Company Reports.

The Grantee shall file the following reports annually with the City Clerk not later than one hundred and twenty (120) days after the end of Grantee's fiscal year:

1. A copy of the consolidated report to its stockholders for such fiscal year rendered by the Grantee's parent company for all of its operations, a copy of such parent company's consolidated profit and loss (income and expense) statement for all of its operations, and a copy of such parent company's consolidated balance sheet for all of its operations.

2. A copy of its report to its stockholders concerning its Torrance franchise operations for such fiscal year (if it prepares such report), a copy of its profit and loss (income and expense) statement for its Torrance franchise operations for such fiscal year, and a copy of its balance sheet for its Torrance franchise operations for such fiscal year showing its investment in properties devoted to its Torrance franchise operations on the basis of original cost less depreciation, together with such other reasonable information as the City Manager shall request with respect to Grantee's properties and expenses related to its CATV operations within the City. Such reports concerning the Grantee's Torrance franchise operations shall be approved by an independent certified public accountant and certified as to correctness by an officer of the Grantee.

C. FCC Reports.

The Grantee shall file with the City Clerk a copy of every report involving its Torrance cable television system made to the FCC, as well as a copy of every such report made to any State agency which in the future may regulate such system.

D. Reports to City Manager.

The Grantee shall prepare and furnish to the City Manager at the times and in the form that he prescribes, such reports with respect to its operations, affairs, transactions or property as he determines may be reasonably necessary or appropriate for the protection of the rights of the City hereunder.

E. Penalty Payment.

In the event that the Grantee shall neglect, omit or otherwise fail to file with the City any report required by the above provisions of this Article XVI at the time specified herein, the Grantee shall pay the City the sum of Fifty Dollars (\$50.00) for each day or portion thereof that such violation continues following such ten (10) day period, unless waived by the City Council for good cause shown.

ARTICLE XVII  
EVALUATION SESSIONS

A. Periodic Evaluation Sessions.

The City and the Grantee shall hold scheduled evaluation sessions within thirty (30) day of the third, sixth, ninth and twelfth anniversary dates of the granting of this franchise. All such evaluation sessions shall be open to the public and advertised in a newspaper of general circulation at least five (5) days before each session. The sessions shall be held at such place, date and time and before such body or officer as the City Council shall determine. The purpose of the sessions shall be to evaluate the performance of the Grantee in fulfilling its obligation under this franchise and the quality of its service to the public. Subject for discussion may include, but shall not be limited to, service rate structure, free or discounted service, application of new technologies, system performance, services provided, programming offered, customer complaints, privacy and civil rights, amendments to this ordinance, statute of Congress and the Legislature and judicial and FCC rulings.

B. Special Evaluation Sessions.

The City may hold special evaluation sessions at any time during the term of this franchise. The Grantee shall be notified of the place, time and date thereof and the topics to be discussed. Such sessions shall be open to the public and advertised in a newspaper of general circulation at least five (5) days before each session.

ARTICLE XVIII  
PROHIBITED ACTIVITIES

A. Television Sets.

The Grantee shall not directly or indirectly do any of the following acts:

1. Engage in the business of selling at retail, leasing, renting, repairing or servicing of television sets, radios or other receiving apparatus, or any part or component thereof except set converters owned by the Grantee;
2. Provide any service or repair to its subscribers, for a fee or otherwise, which extends beyond the connection of its service or the determination by Grantee of the quality of its signal to the recipients thereof;
3. Solicit, refer or cause or permit the solicitation or referral of any subscriber to persons engaged in any business herein prohibited to be engaged in by Grantee; provided, however, that the above provisions of this Section A shall not apply to modifications made to permit two-way communications.

B. Taping and Monitoring.

The Grantee shall not tape or monitor or permit any other person to tape or monitor any cable, line, signal input device or subscriber outlet or receiver for any purpose whatsoever without the express written consent of the subscriber or a court order therefor; provided, however, that the Grantee shall be entitled to conduct systemwide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return path transmission or billing for pay services.

C. Data Collection.

1. The Grantee shall not tabulate any test results, nor permit the use of its cable television system for such tabulation, which would reveal the commercial product preferences or opinions of subscribers, members of their families or their guest, licensees or employees, without the prior consent of the City Council, which, if it grants such consent, may place reasonable conditions therefor.
2. In any event, the Grantee shall not reveal or permit the release or sale of such data on individual subscribers; but, subject to the consent of the City Council, may reveal or permit the release or sale of aggregate data only.

D. Revealing Subscriber Preferences.

1. The Grantee shall not reveal individual subscriber preferences, viewing habits, beliefs, philosophy, creeds or religious beliefs to any person, firm, agency, governmental unit or investigating agency without court authority or prior written consent of the subscriber.
2. Such written consent, if given, shall be limited to a period of time not to exceed three (3) years.
3. The Grantee shall not condition the delivery or receipt of noninteractive cable services to any subscriber on any such consent.

4. Such a subscriber may revoke without penalty or cost any consent previously made by delivering to the Grantee in writing a substantial indication of his intent to so revoke.

E. Revealing Subscriber Lists.

The Grantee shall not reveal or sell or permit the release or sale of its subscriber list (1) without the prior written consent of the City Council, which, if it grants such consent, may place reasonable conditions thereon, or (2) except as the same is necessary for the construction, marketing and maintenance of the Grantee's facilities and services hereunder and the concomitant billing of subscribers for said services.

F. Other Persons Affected.

The prohibitions contained in Sections A to F inclusive of this Article XVIII shall extend and apply to all of the following as well as to the Grantee:

1. Officers, directors, employees and agents of the Grantee;
2. General and limited partners of the Grantee;
3. Any person or combination of persons owning, holding or controlling five (5) percent or more of any corporate stock or other ownership interest of the Grantee;
4. Any affiliated or subsidiary entity owned or controlled by Grantee, or in which any officer, director, stockholder, general or limited partner or person or group of persons owning, holding or controlling any ownership interest in the Grantee, shall own, hold or control five (5) percent or more of any corporate stock or other ownership interest; and
5. Any person, firm or corporation acting or serving in the capacity of a holding or controlling company of the Grantee.

# NATOA SURVEY ON CUSTOMER SERVICE STANDARDS

Jurisdiction/State City of Raleigh, Wake Co

Operator(s) Time Warner Cable

FCC Community Unit Identifier # NC 0512

Name/Title Robert F. Seale  
INFORMATION SERVICES Mgr  
PO Box 590 Raleigh, NC  
27602

Phone 919. 890. 3521

Fax 919. 828. 8036

1. Have you adopted the FCC customer service standards and notified operator of same?

YES NO

2. Date you adopted the rules? 12-12-94

3. Date they become effective in your franchise? 12-12-94

4. Did you have customer service standards in place prior to the FCC's rules? YES NO

5. Date implemented? 1983

6. Implemented during franchise? YES NO

7. Did they require a franchise modification? YES NO

8. Implemented during transfer? YES NO

9. Implemented at renewal? YES NO

10. Were these standards different or more stringent than the FCC's rules? YES NO

11. Specific problems your standards addressed?

All aspects of consumer relations

12. Did you pass different or more stringent rules after the FCC rules came out? YES NO

13. What date? 12-12-94

14. Franchise modification? YES NO

If possible, please enclose a copy of your standards clearly labelled with:

Jurisdiction Name / Operator Name / Date

## IN YOUR OWN OPINION.....

15. Are these new standards different?

How? YES NO

Large comprehensive

16. Are these standards more stringent?

How? YES NO

see attached

17. Why were they necessary in your community?

Consumer Protection -  
good public policy to  
have in place -

18. What sort of evaluation methods are you using to determine compliance? (describe)

Consumer complaints  
to franchise authority

19. Has the operator cooperated in providing necessary or required data? YES NO

20. Is your operator's compliance with FCC or your rules generally: GOOD OK BAD

21. Has your operator attempted to pass through costs of complying with the FCC rules? YES NO

22. Have you seen a decrease in subscriber complaints about service after you adopted FCC customer service rules? YES NO

23. Did you see a decrease in complaints after you implemented your own rules? YES NO

24. Are there consumer protection laws in your state that you think apply to cable operators or could be applied? YES NO

# City of Raleigh's Customer Service Standards for Cable-Telecommunication Providers

## 1. Subscriber Privacy

In accordance with Section 631 of the Federal Cable Act of 1984, the Grantee shall, no less than annually, provide a privacy notice in the form of a separate written statement to subscribers as required by the provisions of the Act.

## 2. Employee Identification

When calling in person on subscribers or other residents, all employees or authorized representatives of the Grantee are required to display an employee identification card with their name, photograph and signature, and a telephone number that can be used for verification of the representative's capacity with the Grantee. Grantee's vehicles shall display the name of the cable telecommunication company in easily distinguishable alpha-numeric characters. Grantee shall make a reasonable effort to cause its subcontractors' vehicles to be identified in a like fashion.

## 3. Office and Telephone Availability

- A. Knowledgeable, qualified company representatives shall be available to respond to customer telephone inquiries Monday Through Friday during normal business hours. Additionally, based on community needs, Grantee will staff its telephones for supplemental hours on weekdays and/or weekends.
- B. Under normal operating conditions, telephone answer time by Grantee's Customer service representatives, including wait time required to transfer the call, shall not exceed 30 seconds. This standard shall be met no less than ninety percent of the time measured on an annual basis.
- C. Under normal operating conditions, the customer shall receive a busy signal less than three percent of the total time that the Grantee's office is open for business.
- D. Customer service center and bill payment locations operated by Grantee shall be open for transactions Monday through Friday during normal business hours. Additionally, based on community needs, Grantee shall schedule supplemental hours on weekdays and/or weekends during which these centers shall be open.
- E. Grantee shall be responsible for adopting and implementing subscriber complaint procedures, and for advising subscribers of the availability of these procedures. The procedures shall be designed to resolve subscriber complaints in a timely and satisfactory manner; to develop sensitivity and responsiveness to subscriber needs by Grantee and its management; and to improve the quality and dependability of services to subscribers by the Grantee.

Established complaint procedures shall include: specific provisions permitting subscriber repair service complaints received to be received by telephone twenty-four (24) hours each day and seven (7) days each week; permitting subscriber repair service complaints to be received at the Grantee's business office from 8:00 AM until 7:00 PM on Monday through Friday of each week and from 9:00 AM until 1:00 PM on Saturday; and the address of the Grantee's business office.



#### 4. Installations, Outage and Service Calls

Under normal operating conditions, each of the following standards shall be met no less than 95 % of the time measured on an annual basis.

- A. Standard installation shall be preformed within seven business days after an order has been placed. "Standard" installations are up to 125 feet from the existing distribution system.
- B. Excluding those situations beyond the control of the Grantee, the Grantee shall respond to service interruptions promptly and no later than 24 hours after the interruption becomes known to the Grantee. Grantee must begin actions to correct other service problems the next business day after notification to the Grantee of the service problem.
- C. The "appointment window" alternatives for installations, service calls, and other installation activities shall be (a) morning, (b) afternoon, or (c) all day during normal business hours. Additionally, based on the community needs, Grantee shall schedule supplemental hours during which appointments can be set.
- D. If, at any time an installer or technician is running late, an attempt to contact the customer shall be made and the appointment reschedule as necessary at a time which is convenient for the customer.
- E. The Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions not within the midnight to 6 am period, insofar as possible, shall be proceeded by notice to subscribers on a barker channel.
- F. Grantee office and technical personnel, in lieu of answering devices, shall receive customer calls twenty-four (24) hours per day and respond to all customer complaint calls until 10:00 p.m. on normal business days. After 10:00 p.m. on any day, trained technicians shall respond to calls if (3) three or more complaints are received by subscribers served by a common distribution system.

#### 5. Communication, Statements, Refunds, and Credits

- A. The Grantee shall provide written information in each of the following areas at the time of installation and at any future time upon request:
  - \* products and services offered
  - \* prices and service options
  - \* installation and service policies
  - \* how to use the cable service
- B. Subscriber billing statements shall be clear, concise and understandable. Such statements shall reflect all services and fees in an itemized fashion.
- C. Refund checks shall be issued promptly, but no later than the earlier of 45 days or the customer's next billing cycle following the resolution of the request or, if service was terminated 45 days from the date of the return of the equipment supplied by the cable company.
- D. Customers shall be notified in writing a minimum of 30 days in advance of any rate or channel change, provided the change is within the control of the Grantee.

- E. Grantee shall provide outage credit to subscribers in accordance with the following policies:

Upon notification, should Grantee fail to correct a service outage problem - within its control - within 24 hours after having receipt of such notice, Grantee shall credit 1/30th of the monthly charge for the affected tier or premium service program to the subscriber for each 24-hour period or fraction thereof following the first 24 hour period during which the subscriber experiences service outage. Subscriber must advise Grantee of the duration of the service interruption for which credit is sought in order to receive such credit.

- F. Late fees shall not be assessed earlier than 30 days past the billing cycle due date.

6. Complaint - Appeals

- A. Upon notification by a subscriber of an unresolved complaint, the Information Access Manager shall determine the facts of the complaint by obtaining information from the subscriber and the Grantee and shall act to resolve the complaint in a manner consistent with the City's authority.
- B. The cable subscriber may register a complaint with the FCC, regarding rates for cable programming services or associated equipment, by using FCC Form 329, the Cable Programming Service Rate Complaint Form.

ADOPTED BY THE COUNCIL OF THE RALEIGH TELECOMMUNICATIONS COMMISSION THIS THE  
13TH DAY OF DECEMBER, 1994.

ATTEST:

BY:

\_\_\_\_\_/\_\_\_\_\_/94  
ROBERT F. SEPE  
Information Services Manager

\_\_\_\_\_/\_\_\_\_\_/94  
DAVID H. PERMAR, Chair  
Raleigh Telecommunications Commission

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All aspects of consumer relations

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13. What date? 12-12-94

14. Franchise modification? YES ☒ NO

If possible, please enclose a copy of your standards clearly labelled with:

Jurisdiction Name / Operator Name / Date

## IN YOUR OWN OPINION.....

15. Are these new standards different?

How?

☒ YES ☐ NO  
they're comprehensive

16. Are these standards more stringent?

How?

☒ YES ☐ NO  
see attached

17. Why were they necessary in your community?

Consumer Protection -  
good public policy to  
have in place -

18. What sort of evaluation methods are you using to determine compliance? (describe)

Consumer complaints  
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19. Has the operator cooperated in providing necessary or required data? ☒ YES ☐ NO

20. Is your operator's compliance with FCC or your rules generally: GOOD OK BAD

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ADOPTED BY THE COUNCIL OF THE RALEIGH TELECOMMUNICATIONS COMMISSION THIS THE 13TH DAY OF DECEMBER, 1994.

ATTEST:

BY:

\_\_\_\_\_/\_\_\_\_\_/94  
ROBERT F. SEPE  
Information Services Manager

\_\_\_\_\_/\_\_\_\_\_/94  
DAVID H. PERMAR, Chair  
Raleigh Telecommunications Commission



(703) 838-4350

*City of Alexandria, Virginia*

*Citizen Assistance Office*

*Consumer Affairs Division*

*P. O. Box 178*

*Alexandria, Virginia 22313*



*Fax (703) 838-6426*

February 2, 1995

Mr. William Cook  
Arnold & Porter  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036

Dear Mr. Cook:

Enclosed is the completed survey in reference to customer service standards.

Thank you for allowing the City of Alexandria to be a part of the survey. If you have any questions, please call me at (703) 838-4533.

Sincerely,

A handwritten signature in cursive script, appearing to read "Prescott Barbash".

Prescott Barbash  
Consumer Affairs Administrator

# NATOA SURVEY ON CUSTOMER SERVICE STANDARDS

Jurisdiction/State Alexandria/Virginia

Operator(s) Jones Intercable, Inc.

FCC Community Unit Identifier # VA0220

Name/Title Prescott Barbash

Cable Television Administrator

Phone 703-838-4533

Fax 703-838-6426

1. Have you adopted the FCC customer service standards and notified operator of same?

☒ YES ☐ NO

2. Date you adopted the rules? June 18, 1994

3. Date they become effective in your franchise?

June 18, 1994

4. Did you have customer service standards in place prior to the FCC rules?

5. Date implemented?

6. Implemented through?

7. Did they require?

8. Implemented?

9. Implemented?

10. Were they more stringent than?

11. Specific provisions:  
Main body of rules ensure  
ensure  
determination  
agreement

12. Did you have any other standards in place prior to the FCC rules?

☒ YES ☐ NO

13. What date? June 18, 1994

14. Franchise modification?

YES ☒ NO

If possible, please enclose a copy of your standards clearly labelled with:

Jurisdiction Name / Operator Name / Date

IN YOUR OWN OPINION.....

15. Are these new standards different?

How?

More Stringent

☒ YES ☐ NO

16. Are these standards more stringent?

How?

Telephone answering standards must be met 95% of the time, financial penalties for missed installations after 2 by the fault of the franchisees.

☒ YES ☐ NO

17. Why were they necessary in your community?

Not necessarily more desirable.

are you using the  
subscriber survey  
quarterly  
and biennially

18. Have you ever been notified by the FCC of a violation?

☒ YES ☐ NO

19. Have you ever been notified by the FCC of a violation?

YES ☐ NO ☐

20. Have you ever been notified by the FCC of a violation?

YES ☐ NO ☐

21. Are there consumer protection laws in your state that you think would be useful operators or could be applied?

YES ☒ NO



ORDINANCE NO. 3727

AN ORDINANCE to repeal Chapter 3 (CABLE TELEVISION REGULATION) of, and to add a new Chapter 3 (ALEXANDRIA CABLE COMMUNICATIONS CODE) to, Title 9 (LICENSING AND REGULATIONS) of The Code of the City of Alexandria, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 3 of Title 9 of The Code of the City of Alexandria, 1981, as amended, be and the same hereby is repealed.

Section 2. That Title 9 of The Code of the City of Alexandria, 1981, as amended, be and the same hereby is amended by adding a new Chapter 3, to read as follows:

Chapter 3

Alexandria Cable Communications Code

Article A

General Provisions

Sec. 9-3-1 Title.

This chapter shall be known and may be cited as the "Alexandria Cable Communications Code."

Sec. 9-3-2 Purpose.

The City Council of Alexandria finds that the development of cable television systems has the potential to be of great benefit to those who reside and work in the city. Cable technology is rapidly changing, and cable plays an essential role as part of the city's basic infrastructure. Cable television systems make extensive use of scarce and valuable public rights-of-way in a manner that differs from the way in which the general public uses them. Moreover, a cable company typically operates a monopoly in its service area, or faces very limited competition. As a result, the grant of a franchise for the use of public rights-of-way has the effect of giving the holder extensive economic benefits and has the potential of placing the holder in a position to abuse its public trust. For these reasons, the city council finds that general welfare of the city requires that regulations be established to ensure that any cable television franchise granted by the city is in accord with and is operated in the public interest. In light of the foregoing, the following goals, among others, underlie the provisions set forth in this chapter:

(a). Cable television should be available to as many city residents as possible.

(b) A cable system should be capable of accommodating both the present and the reasonably foreseeable future cable-related needs of the community.

(c) A cable system should be constructed and maintained during a franchise term so that changes in technology may be integrated into existing system facilities to the maximum extent feasible.

(d) A cable system should be responsive to the needs and interests of the local community.

It is the intent of the city council that all provisions set forth in this chapter be construed to serve the public interest and the foregoing public purposes, and that any franchise issued pursuant to this chapter be construed to include the foregoing findings and public purposes as integral parts thereof.

## ARTICLE B

### Definitions and Word Usage

#### Sec. 9-3-11 *Definitions and usage - general.*

For the purposes of this chapter, the following terms, phrases, words and abbreviations shall have the meanings given in this article, unless otherwise expressly stated. Words not defined herein shall have a meaning set forth in Title 47 of the United States Code, Chapter 5, Subchapter V-A, 47 U.S.C. § 521, et seq., as amended, and, if not defined therein, should have their common and ordinary meaning within the cable television industry.

#### Sec. 9-3-12 *Access channel.*

"Access channel" shall mean any channel on a cable system set aside by a franchisee for public, educational or governmental use.

#### Sec. 9-3-13 *Affiliate.*

"Affiliate" shall mean any person who owns or controls, is owned or controlled by, or is under common ownership or control with a franchisee.

#### Sec. 9-3-14 *Administrator.*

"Administrator" shall mean the cable television administrator appointed by the city manager.

Sec. 9-3-15 *Basic service.*

"Basic service" shall mean any service tier that includes the retransmission of local television broadcast signals.

Sec. 9-3-16 *Cable act.*

"Cable Act" shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, et seq., as it may be amended from time to time.

Sec. 9-3-17 *Cable service.*

"Cable service" shall mean (1) the one-way transmission to subscribers of video programming or other programming services, and (2) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

Sec. 9-3-18 *Cable system or system.*

"Cable system" or "system" shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and is provided to multiple customers within the city, but such term does not include any of the following: (1) any facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) any facility that serves only customers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses any public right-of-way, including streets or easements; (3) any facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, provided that such facility shall be considered a cable system if it is used in the transmission of video programming directly to subscribers, whether on a common carrier or non-common carrier basis; or (4) any facility of any electric utility used solely for operating its electric utility systems. A reference to a cable system refers to any part thereof, including, without limitation, converters.

Sec. 9-3-19 *City.*

"City" shall mean the City of Alexandria, Virginia.

Sec. 9-3-20 *City council or council.*

"City council" or "council" shall mean the governing body of the city.

**Sec. 9-3-21 Educational access channel.**

"Educational access channel" shall mean any channel on a cable system set aside by a franchisee for educational use.

**Sec. 9-3-22 FCC.**

"FCC" shall mean the Federal Communications Commission, its designee or any successor governmental entity.

**Sec. 9-3-23 Franchise.**

"Franchise" shall mean a non-exclusive authorization granted in accordance with this chapter to construct, operate and maintain a cable system along and within the public rights-of-way of the city or a specified portion thereof. Any such authorization, in whatever form granted, shall not include, or be deemed to include, an authorization to transact or carry on a business within the city, or to attach devices to poles or other structures, whether owned by the city or a private entity, or to excavate or perform work in or along any public right-of-way.

**Sec. 9-3-24 Franchise agreement.**

"Franchise agreement" shall mean a contract between the city and a franchisee that sets forth, subject to this chapter, the terms and conditions under which a franchise will be exercised.

**Sec. 9-3-25 Franchise area.**

"Franchise area" shall mean the area of the city that a franchisee is authorized to serve by its franchise agreement.

**Sec. 9-3-26 Franchisee.**

"Franchisee" shall mean a person who has been granted a franchise by the city.

**Sec. 9-3-27 Governmental access channel.**

"Governmental access channel" shall mean any channel on a cable system set aside by a franchisee for government use.

**Sec. 9-3-28 Gross revenues.**

"Gross revenues" shall mean any and all cash, credits, property and other consideration of any kind or nature received on an accrual basis directly or indirectly by a franchisee, any of its affiliates, any person in which a franchisee has a financial interest, or any other entity that is a cable operator of a system which is attributable to, arises from or is in any way derived from the operation of a franchisee's cable system, including the studios and other facilities associated therewith.

Gross revenues include, by way of illustration and not limitation, monthly fees charged subscribers for any basic, optional, premium, per-channel or per-program service; installation, disconnection, reconnection and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments or other consideration received from programmers for carriage of programming on the cable system; revenues from the rentals and sales of converters or other equipment; fees for the rental of studios and production equipment and the use of franchisee personnel; advertising revenues; revenues from program guides; revenues from the sale or carriage of non-cable services, including information services and bypass services; and revenues from home shopping and bank-at-home channels, including commissions from the sales of goods. Gross revenues shall be the basis for computing the franchise fee. Gross revenues shall not include barter, the franchise fee, or any taxes on services furnished by a franchisee which are imposed directly on any subscriber or user by the state, city or other governmental unit and which are collected by a franchisee on behalf of said governmental unit.

**Sec. 9-3-29    *Person.***

"Person" shall mean a natural person, partnership, association, joint stock company, organization, corporation, limited liability corporation and any other legal entity, and any lawful successor thereto or transferee thereof, but such term does not include the city.

**Sec. 9-3-30    *Public access channel.***

"Public access channel" shall mean any channel on a cable system set aside by a franchisee for use by the general public, including groups and individuals, and which is available for such use on a non-discriminatory basis.

**Sec. 9-3-31    *Public rights-of-way.***

"Public rights-of-way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive or bridge, in which the city holds a property interest and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation, operation and maintenance of a cable system. No reference in this chapter or in any franchise agreement to a "public right-of-way" shall be deemed to be a representation or guarantee by the city that its interests or other rights in such right-of-way are sufficient to permit its use for the installation, operation and maintenance of a cable system, and a franchisee shall be deemed to gain only those rights which the city has the undisputed right and power to give.

Sec. 9-3-32    *Sale.*

"Sale" shall mean any sale, exchange or barter transaction.

Sec. 9-3-33    *Service tier.*

"Service tier" shall mean a package of two or more cable services for which a separate charge is made by a franchisee, other than a package of premium and pay-per-view services that are also sold on a genuine a la carte basis.

Sec. 9-3-34    *Subscriber.*

"Subscriber" shall mean any person who legally receives any service delivered over a cable system.

Sec. 9-3-35    *Transfer.*

(a) "Transfer" shall mean a transaction in which any of the following occurs:

(i) more than twenty percent of the ownership interest in a franchisee or in the cable system is sold, assigned, leased, subleased or mortgaged, whether directly or indirectly;

(ii) control of a franchisee is transferred;

(iii) the rights or obligations, or both, of a franchisee under a franchise are assigned or otherwise transferred, whether directly or indirectly;

(iv) one or more general partners, with management responsibilities, are removed from or added to a franchisee; or

(v) a debt that is secured, in whole or in part, by the cable system of a franchisee is materially increased, whether by the franchisee or an affiliate, in a manner that may adversely affect the cable system's rates or services.

(b) "Control," for purposes of this section, means the legal or practical ability to exert actual working control over the affairs of a franchisee, whether directly or indirectly and whether by contractual agreement, by majority or lesser ownership interest or by any other means.

(c) A rebuttable presumption that a transfer of the control of a Franchisee has occurred shall arise upon the acquisition or accumulation of five percent or more of the ownership of a franchisee by any person or group of persons acting in concert, where such person or group of persons did not, at the time the franchise was granted, already own or control fifty percent or more of the ownership of the franchisee.

**Sec. 9-3-36    *Transmission of video programming directly to customers.***

"Transmission of video programming directly to subscribers" shall mean the delivery of programming to equipment located on subscriber premises, whether or not that programming is selected, controlled or marketed to subscribers by the entity that delivers it.

**Sec. 9-3-37    *User.***

"User" shall mean a person utilizing a cable system channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a subscriber.

## **ARTICLE C**

### **General Franchise Characteristics**

**Sec. 9-3-51    *Grant of franchise.***

The city council may grant one or more cable television franchises in accordance with this chapter and, except as otherwise expressly provided in a franchise agreement, each such franchise shall be subject to the provisions of this chapter, as it may be amended from time to time.

**Sec. 9-3-52    *Franchise required.***

No person may construct or operate a cable system without a franchise granted by the city council. No person may be granted a franchise without having entered into a franchise agreement with the city.

**Sec. 9-3-53    *Operation of a cable system without a franchise.***

Any person who occupies public rights-of-way for the purpose of constructing or operating a cable system and who does not hold a valid franchise from the city shall be subject to all provisions of this chapter. In its discretion, the city may, at any time, require such person to enter into a franchise agreement with the city, require such person to remove its property and restore the area occupied by the property to a condition satisfactory to the city, remove the property itself and restore the area to a satisfactory condition and charge the person the costs therefor, or take any other action it is entitled to take under applicable law, including filing an action for damages. In no event shall a franchise be created unless it is issued by action of the city council and is subject to a written franchise agreement.

**Sec. 9-3-54    Franchise characteristics.**

(a) A franchise authorizes use of public rights-of-way for installing cables, wires, lines, optical fiber, underground conduit and other devices necessary and appurtenant to the operation of a cable system within a franchise area, but does not authorize a franchisee to provide service to, or install a cable system on, private property without the property owner's consent (except for use of compatible easements pursuant to section 621 of the Cable Act, 47 U.S.C. § 541(a)(2)), or to use conduits without a separate agreement with the owner of same.

(b) A franchise is non-exclusive and will not explicitly or implicitly preclude the issuance of other franchises to operate cable systems within the city, affect the city's right to authorize use of public rights-of-way by other persons to operate cable systems or for other purposes, or affect the city's right to construct, operate, or maintain a cable system itself, with or without a franchise.

(c) Once a franchise agreement has been executed by the city and a franchisee, the agreement shall constitute a contract between the franchisee and the city, and the terms, conditions, and provisions of the agreement, subject to this chapter and all other duly enacted and applicable laws (except as expressly otherwise provided in this agreement), shall define the rights and obligations of the franchisee and the city relating to the franchise.

(d) All privileges provided by a franchise shall be subordinate to any prior lawful occupancy of the public rights-of-way, and the city shall always retain the right to designate where a franchisee's facilities are to be placed within the public rights-of-way in order to avoid actual or potential conflicts between users of the public rights-of-way and to ensure the safety and convenience of the public.

(f) Except as otherwise provided in a franchise agreement, a franchisee may not enter into or enforce any exclusive contract with a subscriber (including, but not limited to, a building owner) as a condition of providing or continuing service.

**Sec. 9-3-55    Franchisee subject to other laws, police power.**

(a) At all times, a franchisee shall be subject to and shall comply with all applicable federal, state and local laws, and shall be subject to the lawful exercise of the city's police power authority, including all rights the city may have under the Cable Act, 47 U.S.C. § 552.

(b) Except as expressly otherwise provided in a franchise agreement, the city shall retain all authority, including that



given to it by federal and state law, to regulate cable systems, franchisees and franchises.

**Sec. 9-3-56 Acts at franchisee's expense.**

Any act that a franchisee is or may be required to perform under this chapter, a franchise agreement or other applicable law shall be performed at the franchisee's sole expense, unless expressly provided to the contrary in this chapter, the franchise agreement or other applicable law.

**Sec. 9-3-57 Eminent domain.**

Nothing in this chapter shall be deemed or construed to impair or affect, in any way or to any extent, any right the city may have to acquire the property of the franchisee through the exercise of the right of eminent domain, or be deemed or construed to contract away or to modify or abridge, either for a term or in perpetuity, any right of eminent domain the city may have with respect to any public utility.

**Sec. 9-3-58 Interpretation of franchise terms.**

(a) Except as otherwise expressly provided in a franchise agreement, in the event of a conflict between this chapter and a franchise agreement, the provisions of this chapter shall control.

(b) The provisions of this chapter and a franchise agreement shall be construed in favor of the city in order to effect the purposes of this chapter and to promote the public interest.

(c) Except as to matters that are governed solely by federal law or regulation, a franchise agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

**Sec. 9-3-59 Filing fees.**

To be acceptable for filing, applications and requests submitted under this chapter shall be accompanied by the following filing fees which are designed to cover the costs incurred by the city, other than out-of-pocket expenses, in processing the applications and requests:

(a) for the grant of an initial franchise:

(1) a request to initiate the bidding process pursuant to section 9-3-62: \$5,000;

(2) a bid submitted pursuant to section 9-3-63: \$50,000; provided, that, if more than one bidder submits a bid,